

Before the  
Federal Communications Commission  
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Policies and Rules Concerning ) CC Docket No. 93-292  
Toll Fraud )

COMMENTS  
OF THE  
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the exchange carrier industry. Its members provide over 98 percent of the exchange carrier-provided access lines in the U. S.

I. INTRODUCTION.

In this proceeding, the Commission is seeking comment on various issues in order to identify additional policies it should establish or steps it should take to avoid, or reduce the risks of, toll fraud.<sup>1</sup> The NPRM contains various proposals to assess responsibility for toll fraud. Such an approach does not address the Commission's stated purpose and does not address ways to prevent toll fraud. Such a misguided approach may even serve to remove any incentive for those parties most likely to be successful in preventing toll fraud from taking the necessary steps to do so.

<sup>1</sup>Policies and Rules Concerning Toll Fraud, CC Docket No. 93-292, Notice of Proposed Rulemaking, FCC 93-496, released December 2, 1993 at ¶ 10. [NPRM].

Toll fraud is a serious problem for all telecommunications users and service providers. It results in hundreds of millions of dollars of losses each year. If toll fraud can be eliminated or substantially reduced, there is no need to address the proposals contained in the NPRM. Instead of attempting to regulate which parties should share in the losses associated with toll fraud, the Commission should utilize its resources and expertise to assist Congress in crafting and passing effective legislation designed to punish toll fraud and facilitate enforcement and to assist law enforcement officials in combatting toll fraud. The Commission and other agencies should also take a more aggressive approach in alerting users as to the problems associated with toll fraud and the steps currently available to prevent its occurrence.

In attempting to address the flawed approach taken in the NPRM, in general, it would be completely arbitrary for the Commission to adopt a regulatory policy whereby an exchange carrier would be required to assume responsibility for toll fraud in any instance where the exchange carrier has no control over the particular facility used to perpetrate the fraud. On the other hand, if an exchange carrier offers a service specifically intended to prevent fraud and the service malfunctions, the exchange carrier could be expected to share in the responsibility for the affected carrier's costs, assuming that the costs would not be assessed at their retail value and that the exchange carrier could recoup its share of the costs through rates. In

the remainder of these comments, USTA will address some of the specific instances of toll fraud discussed in the NPRM.

## **II. PBX FRAUD.**

It is important to note, at the outset, that the owner of the PBX equipment has the primary care, custody and control of the CPE. Therefore, the owner bears sole responsibility for all fraud perpetrated through his or her equipment. Only the owner can control access to and use of equipment and determine if usage is fraudulent. It is unreasonable to suggest that exchange carriers should bear any responsibility for PBX fraud.

The Commission asks for comment on whether exchange carriers should be required to offer monitoring services for PBX equipment.<sup>2</sup> The NPRM does not explain the nature of such services or how such services could prevent toll fraud. Equipment vendors already make available security features which, if properly utilized, make fraudulent use difficult. Since the owner certainly has the best opportunity currently to monitor use of his or her equipment, the owner should be encouraged to take the steps necessary to protect his or her equipment from fraudulent or inappropriate use.

## **III. PAYPHONE FRAUD.**

As noted in the NPRM, USTA filed comments opposing the Florida Public Service Commission (PSC) Petition which requested

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<sup>2</sup>NPRM at ¶ 26.

that the Commission adopt rules mirroring recently adopted Florida regulations which release a pay telephone provider from liability for fraudulent charges if the pay telephone provider subscribes to call screening services. Under the regulations, exchange carriers are made responsible for charges that are associated with the failure of the screening services.

USTA pointed out that the record in CC Docket No. 91-35 shows that a variety of options exist to provide fraud protection and that these options currently are underutilized. USTA noted that the Florida regulations were too vague in that they did not address circumstances where the technology of the end office does not permit the offering of screening functions, did not address the different functionalities of call screening offerings and did not provide any opportunity for exchange carriers to dispute charges.

Exchange carriers should not be forced to implement screening services if the technology is not available or demand does not exist. Nor should exchange carriers be forced to assume responsibility for any call which eludes screening. Again, regulations, such as those adopted in Florida, which remove the incentive of those with the most direct interest in protecting against fraud to prevent it, in this case pay telephone providers, should not be adopted.

#### IV. LIDB FRAUD.

The NPRM suggests that exchange carriers may need incentives to make LIDB as effective as it can be.<sup>3</sup> LIDB was not designed to prevent fraud. LIDB records whether calling cards are valid in that its authorization decision can take into account whether the card holders have paid their bills. However, LIDB cannot determine whether card holders will pay their bills in the future or whether the person using the card is the authorized card holder. LIDB can also detect patterns of use that suggest fraudulent activity. However, LIDB owners cannot force authorizing service providers to query for each call, or even know if a query occurs. If carriers do not return calling and called numbers with the query, the ability to analyze and act on fraudulent use is virtually eliminated.

Any liability assessed against LIDB owners will necessarily increase the cost of operation, which ultimately will be borne by ratepayers. Proposals for LIDB owners to bear some of the responsibility for unauthorized card use are inappropriate as the LIDB owners cannot prevent or detect such fraud. In the extreme case, a LIDB owner could be implicated in a claim in which no authorization was requested.

#### V. CONCLUSION.

The proposals in the NPRM deemphasize fraud prevention and suggest a framework which would reduce incentives to stop toll

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<sup>3</sup>NPRM at ¶ 39.

fraud by those with the most direct interest and capability. In no instance should exchange carriers be considered the default obligor for any toll fraud claim. USTA would encourage the Commission to focus its efforts and direct its expertise toward preventing toll fraud and concentrate on improving the incentives for those that can best control fraud to prevent it.

Respectfully submitted,

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